Practice Book Revisions

Superior Court

July 19, 2005

NOTICE

SUPERIOR COURT

Notice is hereby given that on June 20, 2005 the judges of the Superior Court adopted the Practice Book revisions which are contained herein. These amendments become effective on January 1, 2006, except the revisions to Section 1-10 which become effective on October 1, 2005.

Attest:

Carl E. Testo
Director of Legal Services

INTRODUCTION

Contained herein are amendments to the Superior Court rules and forms and to the Rules of Professional Conduct. These amendments are indicated by brackets for deletions and underlines for added language. The designation ''NEW'' is printed with the title of each new rule. This material should be used as a supplement to the Practice Book until the 2006 edition of the Practice Book becomes available.

Commentaries to the Superior Court rules and forms and amendment notes to the Rules of Professional Conduct are also contained herein. The commentaries and amendment notes are included for informational purposes only.

Rules Committee of the
Superior Court

AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

Sec. 7.4A. Certification as Specialist

(a) Except as provided in Rule 7.4, a lawyer shall not state or imply that he or she is a specialist in a field of law unless the lawyer is currently certified as a specialist in that field of law by a board or other entity which is approved by the Rules Committee of the superior court of this state. Among the criteria to be considered by the Rules Committee in determining upon application whether to approve a board or entity as an agency which may certify lawyers practicing in this state as being specialists, shall be the requirement that the board or entity certify specialists on the basis of published standards and procedures which (1) do not discriminate against any lawyer properly qualified for such certification, (2) provide a reasonable basis for the representation that lawyers so certified possess special competence, and (3) require redetermination of the special qualifications of certified specialists after a period of not more than five years.

(b) A lawyer shall not state that he or she is a certified specialist if the lawyer's certification has terminated, or if the statement is otherwise contrary to the terms of such certification.

(c) Certification as a specialist may not be attributed to a law firm.

(d) Lawyers may be certified as specialists in the following fields of law:

(1) Administrative law: The practice of law dealing with states, their political subdivisions, regional and metropolitan authorities and other public entities including, but not limited to, their rights and duties, financing, public housing and urban development, the rights of public employees, election law, school law, sovereign immunity, and constitutional law; practice before federal and state courts and governmental agencies.

(2) Admiralty: The practice of law dealing with all matters arising under the carriage of goods by sea act (COGSA), Harter Act, Jones Act, and federal and state maritime law including, but not limited to, the carriage of goods, collision and other maritime torts, general average, salvage, limitation of liability, ship financing, ship subsidies, the rights of injured sailors and longshoremen; practice before federal and state courts and governmental agencies (including the Federal Maritime Commission).

(3) Antitrust: The practice of law dealing with all matters arising under the Sherman Act, Clayton Act, Federal Trade Commission Act, Hart-Scott-Rodino Antitrust Improvements Act and State Antitrust Statutes including but not limited to, restraints of trade, unfair competition, monopolization, price discrimination, restrictive practices; practice before federal and state courts and governmental agencies.

(4) Appellate practice: The practice of law dealing with all procedural and substantive aspects of civil and criminal matters before federal and state appeals courts including, but not limited to, arguments and the submission of briefs.

(5) Business Bankruptcy: The practice of law dealing with all aspects of the United States Bankruptcy Code when the debtor was engaged in business before the institution of a Chapter 7, 9, or 11 proceeding. This includes, but is not limited to, business liquidations, business reorganizations, and related adversary and contested proceedings.

(6) Consumer Bankruptcy: The practice of law dealing with all aspects of the United States Bankruptcy Code when the debtor was not engaged in business before the institution of a Chapter 7, 12, or 13 proceeding. This includes, but is not

limited to, liquidations, wage earner plans, family farmers and related adversary and contested proceedings.

(7) Civil rights and discrimination: The practice of law dealing with all matters arising under federal and state law relating to proper treatment in the areas of, among others, public accommodations, voting, employment, housing, administration of welfare and social security benefits; practice before federal and state courts and governmental agencies.

(8) Civil trial practice: The practice of law dealing with representation of parties before federal or state courts in all noncriminal matters.

(9) Commercial transactions: The practice of law dealing with all aspects of commercial paper, contracts, sales and financing, including, but not limited to, secured transactions.

(10) Consumer claims and protection: The practice of law dealing with all aspects of consumer transactions including, but not limited to, sales practices, credit transactions, secured transactions and warranties; all matters arising under the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Magnuson-Moss Act, the Truth in Lending Act, state statutes such as the ''Little FTC'' acts, and other analogous federal and state statutes.

(11) Corporate and business organizations: The practice of law dealing with all aspects of the formation, operation and dissolution of corporations, partnerships (general and limited), agency and other forms of business organizations.

(12) Corporate finance and securities: The practice of law dealing with all matters arising under the Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisors Act (or the Federal Securities Code, if adopted) and other federal and state securities statutes; financing corporate activities; mergers and acquisitions; practice before the Securities and Exchange Commission and state securities commissions.

(13) Criminal: The practice of law dealing with the prosecution or representation of persons accused of crimes at all stages of criminal proceedings in federal or state courts, including, but not limited to, the protection of the accused's constitutional rights.

(14) Environmental: The practice of law dealing with all aspects of the regulation of environmental quality by both federal and state governments; control of air pollution, water pollution, noise pollution, toxic substances, pesticides, and civilian uses of nuclear energy; solid waste/resource recovery; all matters arising under the National Environmental Policy Act, Clean Air Act, Federal Water Pollution Control Act, Noise Control Act, Solid Waste Disposal Act, Toxic Substance Control Act and other federal and state environmental statutes; practice before federal and state courts and governmental agencies.

(15) Estate planning and probate: The practice of law dealing with all aspects of the analysis and planning for the conservation and disposition of estates, giving due consideration to the applicable tax consequences, both federal and state; the preparation of legal instruments in order to effectuate estate plans; administering estates, including tax related matters, both federal and state.

(16) Family and matrimonial: The practice of law dealing with all aspects of antenuptial and domestic relationships, separation and divorce, alimony and child support, child custody matters and adoption, giving due consideration to the tax consequences, and court proceedings relating thereto.

(17) Government contracts and claims: The practice of law dealing with all aspects of the negotiation and administration of contracts with federal and state governmental agencies.

(18) Immigration and naturalization: The practice of law dealing with obtaining and retaining permission to enter and remain in the United States including, but not

limited to, such matters as visas, change of status, deportation and naturalization; representation of aliens before courts and governmental agencies; protection of aliens' constitutional rights.

(19) International: The practice of law dealing with all aspects of the relations among states, international business transactions, international taxation, customs and trade law and foreign and comparative law.

(20) Labor: The practice of law dealing with all aspects of employment relations (public and private) including but not limited to, unfair labor practices, collective bargaining, contract administration, the rights of individual employees and union members, employment discrimination; all matters arising under the National Labor Relations Act (Wagner Act), Labor Management Relations Act (Taft-Hartley Act), Labor Management Reporting and Disclosure Act (Landrum-Griffin Act), Fair Labor Standards Act, Title VII of The Civil Rights Act of 1964, Occupational Safety and Health Act (OSHA), Employee Retirement Income Security Act (ERISA), other federal statutes and analogous state statutes; practice before the national labor relations board, analogous state boards, federal and state courts, and arbitrators.

(21) Military: The practice of law dealing with the presentation of parties before courts-martial and other military tribunals in disputes arising under the uniform code of military justice; the representation of veterans and their dependents in seeking government benefits due to them on account of military service; handling civil law problems of the military.

(22) Natural Resources: The practice of law dealing with all aspects of the regulation of natural resources such as coal, oil, gas, minerals, water and public lands; the rights and responsibilities relating to the ownership and exploitation of such natural resources.

(23) Patent, trademark and copyright: The practice of law dealing with all aspects of the registration, protection and licensing of patents, trademarks or copyrights; practice before federal and state courts in actions for infringement and other actions; the prosecution of applications before the United States Patent and Trademark Office; counseling with regard to the law of unfair competition as it relates to patents, trademarks and copyrights.

(24) (A) Residential Real Estate: The practice of law dealing with all aspects of real property transactions involving single one-to-four family residential dwellings when the client uses such dwelling or expresses in writing the intent to use such dwelling as the client's primary or other residence, including, but not limited to, real estate conveyances, title searches and property transfers, leases, condominiums, **[**and**]** cooperatives, and other common interest communities, planned unit developments, mortgages, condemnation and eminent domain, zoning and land use planning, property taxes, **[**real estate development and financing (with due consideration to tax and securities consequences)**]** and determination of property rights.

(B) Commercial Real Estate: The practice of law dealing with all aspects of real property transactions except for residential real estate as defined in subsection (A) of this subsection, including, but not limited to, real estate conveyances, title searches and property transfers, leases, condominiums, cooperatives and other common interest communities, planned unit developments, mortgages, condemnation and eminent domain, zoning and land use planning, property taxes, real estate development and financing (with due consideration to tax and securities consequences) and determination of property rights.

(25) Taxation: The practice of law dealing with all matters arising under the Internal Revenue Code, Employee Retirement Income Security Act (ERISA), state and local tax laws and foreign tax laws, including counseling with respect thereto; practice before federal and state courts and governmental agencies.

(26) Workers' Compensation: The practice of law dealing with the representation of parties before federal and state agencies, boards and courts in actions to determine eligibility for workers' compensation, and disability.

AMENDMENT NOTES: The above change splits the definition of real property into the separate areas of residential real property and commercial real property.

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GENERAL PROVISIONS

PRACTICE BOOK FORMS

AMENDMENTS TO THE GENERAL PROVISIONS OF THE SUPERIOR COURT RULES

Sec. 1-10. Cameras and Electronic Media; In General

(a) Except as otherwise provided by these rules, a judicial authority should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions. A judicial authority may authorize:

(1) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(3) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(A) the means of recording will not distract participants or impair the dignity of the proceedings;

(B) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(C) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(D) the reproduction will be exhibited only for instructional purposes in educational institutions.

(b) An attorney in good standing in this state, who has in his or her possession a picture identification card authorized by the office of the chief court administrator indicating that he or she is an attorney, may possess in a court facility an electronic device, including, but not limited to, a cellular telephone, portable computer, or personal digital assistant, which device has the capacity to broadcast, record, or take photographs. Such devices shall not be used in any court facility for the purpose of broadcasting or recording audio or video, or for any photographic purposes, except that any person employed in a state's attorneys' office or a public defenders' office that is located in a court facility may use such devices in such office. Cellular telephones may be used in a court facility for telephonic purposes to transmit and receive voice signals only, but in no event shall they be used in any courtroom, lockup, chambers, or offices, except that any person employed in a state's attorneys' office or a public defenders' office that is located in a court facility may use a cellular telephone in such office. Personal computers may be used, with the permission of the judicial authority, in a courtroom in conjunction with the conduct of a hearing or trial. A violation of this subsection may constitute misconduct or contempt. This subsection shall be in force for a period of one year from its effective date, unless terminated sooner or extended beyond said period by vote of the judges of the superior court, to enable an analysis of the effects of this subsection to be made and reported to such judges. This subsection shall not apply to attorneys who are employees of the Judicial Branch. Such attorneys shall comply with Judicial Branch policies concerning the possession and use of electronic devices in court facilities. This subsection shall not be deemed to restrict in any way the possession or use of electronic devices in court facilities by judges of the superior court, judge trial referees, state referees, family support magistrates or family support referees.

COMMENTARY: The above change allows attorneys to possess certain electronic devices in court facilities as long as they do not use them in a manner prohibited by paragraph (b) of the rule. A violation of paragraph (b) shall be considered a serious transgression because, for example, the unauthorized taking of photographs in a court facility may jeopardize security and the unauthorized taking of photographs of

jurors or witnesses during court proceedings may disrupt the proceedings. A judicial authority may waive the provisions of this subsection with respect to the use of cell phones and other devices in the courtroom or chambers.

Sec. 2-32. Filing Complaints against Attorneys; Action; Time Limitation

(a) Any person, including disciplinary counsel, or a grievance panel on its own motion, may file a written complaint, executed under penalties of false statement, alleging attorney misconduct whether or not such alleged misconduct occurred in the actual presence of the court. Complaints against attorneys shall be filed with the statewide bar counsel. Within seven days of the receipt of a complaint the statewide bar counsel shall review the complaint and process it in accordance with subdivisions (1), (2) or (3) of this subsection as follows:

(1) forward the complaint to a grievance panel in the judicial district in which the respondent maintains his or her principal office or residence, provided that, if the respondent does not maintain such an address in this state, the statewide bar counsel shall forward the complaint to any grievance panel; and notify the complainant and the respondent, by certified mail with return receipt, of the panel to which the complaint was sent. The notification to the respondent shall be accompanied by a copy of the complaint. The respondent shall respond within thirty days of the date notification is mailed to the respondent unless for good cause shown such time is extended by the grievance panel. The response shall be sent to the grievance panel to which the complaint has been referred. The failure to file a timely response shall constitute misconduct unless the respondent establishes that the failure to respond timely was for good cause shown;

(2) refer the complaint to the chair of the statewide grievance committee or an attorney designee of the chair and to a nonattorney member of the committee, and the statewide bar counsel in conjunction with the chair or attorney designee and the nonattorney member, shall if deemed appropriate, dismiss the complaint on one or more of the following grounds:

(A) the complaint only alleges a fee dispute and not a clearly excessive or improper fee;

(B) the complaint does not allege facts which, if true, would constitute a violation of any provision of the applicable rules governing attorney conduct;

(C) the complaint does not contain sufficient specific allegations on which to conduct an investigation;

(D) the complaint is duplicative of a previously **[**dismissed**]** adjudicated complaint;

(E) the complaint alleges that the last act or omission constituting the alleged misconduct occurred more than six years prior to the date on which the complaint was filed;

(i) Notwithstanding the period of limitation set forth in this subparagraph, an allegation of misconduct that would constitute a violation of Rule 1.15, 8.1 or 8.4 (2) through (6) of the Rules of Professional Conduct may still be considered as long as a written complaint is filed within one year of the discovery of such alleged misconduct.

(ii) Each period of limitation in this subparagraph is tolled during any period in which: (1) the alleged misconduct remains undiscovered due to active concealment; (2) the alleged misconduct would constitute a violation of Rule 1.8 (c) and the conditions precedent of the instrument have not been satisfied; (3) the alleged misconduct is part of a continuing course of misconduct; or (4) the aggrieved party is under the age of majority, insane, or otherwise unable to file a complaint due to mental or physical incapacitation.

(F) the complaint alleges misconduct occurring in a superior court, appellate court or supreme court action and the court has been made aware of the allegations of

misconduct and has rendered a decision finding misconduct or finding that either no misconduct has occurred or that the allegations should not be referred to the statewide grievance committee;

(G) the complaint alleges personal behavior outside the practice of law which does not constitute a violation of the Rules of Professional Conduct;

(H) the complaint alleges the nonpayment of incurred indebtedness;

(I) the complaint names only a law firm or other entity and not any individual attorney, unless dismissal would result in gross injustice. If the complaint names a law firm or other entity as well as an individual attorney or attorneys, the complaint shall be dismissed only as against the law firm or entity;

(J) the complaint alleges misconduct occurring in another jurisdiction in which the attorney is also admitted and in which the attorney maintains an office to practice law, and it would be more practicable for the matter to be determined in the other jurisdiction. If a complaint is dismissed pursuant to this subdivision, it shall be without prejudice and the matter shall be referred by the statewide bar counsel to the jurisdiction in which the conduct is alleged to have occurred.

(3) If a complaint alleges only a fee dispute within the meaning of subsection (a) (2) (A) of this section, the statewide bar counsel in conjunction with the chairperson or attorney designee and the nonattorney member may stay further proceedings on the complaint on such terms and conditions deemed appropriate, including referring the parties to fee arbitration. The record and result of any such fee arbitration shall be filed with the statewide bar counsel and shall be dispositive of the complaint. A party who refuses to utilize the no cost fee arbitration service provided by the Connecticut Bar Association shall pay the cost of the arbitration.

(b) The statewide bar counsel, chair or attorney designee and nonattorney member shall have fourteen days from the date the complaint was filed to determine whether to dismiss the complaint. If after review by the statewide bar counsel, chair or attorney designee and nonattorney member it is determined that the complaint should be forwarded to a grievance panel for investigation in accordance with subsections (f) through (j) of this section, the complaint shall be so forwarded in accordance with subsection (a) (1) of this section within seven days of the determination to forward the complaint.

(c) If the complaint is dismissed by the statewide bar counsel in conjunction with the chair or attorney designee and nonattorney member, the complainant and respondent shall be notified of the dismissal in writing. The respondent shall be provided with a copy of the complaint with the notice of dismissal. The notice of dismissal shall set forth the reason or reasons for the dismissal. The complainant shall have fourteen days from the date notice of the dismissal is mailed to the complainant to file an appeal of the dismissal. The appeal shall be in writing setting forth the basis of the appeal and shall be filed with the statewide bar counsel who shall forward it to a reviewing committee for decision on the appeal. The reviewing committee shall review the appeal and render a decision thereon within sixty days of the filing of the appeal. The reviewing committee shall either affirm the dismissal of the complaint or order the complaint forwarded to a grievance panel for investigation in accordance with subsections (f) through (j) of this section. The decision of the reviewing committee shall be in writing and mailed to the complainant. The decision of the reviewing committee shall be final.

(d) The statewide bar counsel shall keep a record of all complaints filed. The complainant and the respondent shall notify the statewide bar counsel of any change of address or telephone number during the pendency of the proceedings on the complaint.

(e) If for good cause a grievance panel declines, or is unable pursuant to Section 2-29 (d), to investigate a complaint, it shall forthwith return the complaint to the

statewide bar counsel to be referred by him or her immediately to another panel. Notification of such referral shall be given by the statewide bar counsel to the complainant and the respondent by certified mail with return receipt.

(f) The grievance panel, with the assistance of the grievance counsel assigned to it, shall investigate each complaint to determine whether probable cause exists that the attorney is guilty of misconduct. The grievance panel may, upon the vote of a majority of its members, require that a disciplinary counsel pursue the matter before the grievance panel on the issue of probable cause.

(g) Investigations and proceedings of the grievance panel shall be confidential unless the attorney under investigation requests that such investigation and proceedings be public.

(h) On the request of the respondent and for good cause shown, or on its own motion, the grievance panel may conduct a hearing on the complaint. The complainant and respondent shall be entitled to be present at any proceedings on the complaint at which testimony is given and to have counsel present, provided, however, that they shall not be entitled to examine or cross-examine witnesses unless requested by the grievance panel.

(i) The panel shall, within one hundred and ten days from the date the complaint was referred to it, unless such time is extended pursuant to subsection (j), do one of the following: (1) If the panel determines that probable cause exists that the respondent is guilty of misconduct, it shall file the following with the statewide grievance committee and with the disciplinary counsel: (A) its written determination that probable cause exists that the respondent is guilty of misconduct, (B) a copy of the complaint and response, (C) a transcript of any testimony heard by the panel, (D) a copy of any investigatory file and copies of any documents, transcripts or other written materials which were available to the panel. These materials shall constitute the panel's record in the case. (2) If the panel determines that no probable cause exists that the respondent is guilty of misconduct, it shall dismiss the complaint unless there is an allegation in the complaint that the respondent committed a crime. Such dismissal shall be final and there shall be no review of the matter by the statewide grievance committee, but the panel shall file with the statewide grievance committee a copy of its decision dismissing the complaint and the materials set forth in subsection (i) (1) (B), (C) and (D). In cases in which there is an allegation in the complaint that the respondent committed a crime, the panel shall file with the statewide grievance committee and with disciplinary counsel its written determination that no probable cause exists and the materials set forth in subsection (i) (1) (B), (C) and (D). These materials shall constitute the panel's record in the case.

(j) The panel may file a motion for extension of time not to exceed thirty days with the statewide grievance committee which may grant the motion only upon a finding of good cause. If the panel does not complete its action on a complaint within the time provided in this section, the statewide grievance committee shall inquire into the delay and shall order that the panel take action on the complaint forthwith, or order that the complaint be forwarded to and heard by another panel or a reviewing committee designated by the statewide grievance committee. The panel shall not make a probable cause determination based, in full or in part, on a claim of misconduct not alleged in the complaint without first notifying the respondent that it is considering such action and affording the respondent the opportunity to be heard.

(k) The panel shall notify the complainant, the respondent, and the statewide grievance committee of its determination. The determination shall be a matter of public record.

COMMENTARY: The above change to subsection (a)(2)(D) permits the dismissal of a complaint that is duplicative of a previously adjudicated complaint, regardless of the outcome of the earlier complaint.

Sec. 2-47. Presentments and Unauthorized Practice of Law Petitions

(a) Presentment of attorneys for misconduct, whether or not the misconduct occurred in the actual presence of the court, shall be made by written complaint of the statewide grievance committee or a reviewing committee. Service of the complaint shall be made as in civil actions. Any interim proceedings to the contrary notwithstanding, a hearing on the merits of the complaint shall be held within sixty days of the date the complaint was filed with the court. At such hearing, the respondent shall have the right to be heard in his or her own defense and by witnesses and counsel. After such hearing the court shall render a judgment dismissing the complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. This may include conditions to be fulfilled by the attorney before he or she may apply for readmission or reinstatement. Unless otherwise ordered by the court, such complaints shall be prosecuted by the disciplinary counsel or an attorney appointed pursuant to Section 2-48.

(b) The sole issue to be determined in a disciplinary proceeding predicated upon conviction of a felony, any larceny or crime for which the lawyer is sentenced to a term of incarceration or for which a suspended period of incarceration is imposed shall be the extent of the final discipline to be imposed.

(c) A petition to restrain any person from engaging in the unauthorized practice of law not occurring in the actual presence of the court may be made by written complaint to the superior court in the judicial district where such violation occurs. When offenses have been committed by the same person in more than one judicial district, presentment for all offenses may be made in any one of such judicial districts. Such complaint may be prosecuted by the state's attorney, by the disciplinary counsel, or by any member of the bar by direction of the court. Upon the filing of such complaint, a rule to show cause shall issue to the defendant, who may make any proper answer within twenty days from the return of the rule and who shall have the right to be heard as soon as practicable, and upon such hearing the court shall make such lawful orders as it may deem just. Such complaints shall be proceeded with as civil actions.

(d)(1) If a determination is made by the statewide grievance committee or a reviewing committee that a respondent is guilty of misconduct and such misconduct does not otherwise warrant a presentment to the superior court, but the respondent has been disciplined pursuant to these rules by the statewide grievance committee, a reviewing committee or the court at least three times within the five year period preceding the date of the filing of the grievance complaint that gave rise to such finding of misconduct in the instant case, the statewide grievance committee or the reviewing committee shall direct the disciplinary counsel to file a presentment against the respondent in the superior court. Service of the matter shall be made as in civil actions. The statewide grievance committee or the reviewing committee shall file with the court the record in the matter and a copy of the prior discipline issued against the respondent within such five year period. The sole issue to be determined by the court upon the presentment shall be the appropriate action **[**discipline**]** to take **[**be imposed**]** as a result of the nature of the misconduct in the instant case and the cumulative discipline issued concerning the respondent within such five year period. Such **[**discipline**]** action shall be in the form of a judgment dismissing the complaint or imposing discipline as follows: **[**may include**]** reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. This **[**suspension or disbarment**]** may include conditions to be fulfilled by the respondent before he or she may apply for readmission or reinstatement. This subsection shall apply to all findings of misconduct issued from the day of enactment

forward and the determination of presentment shall consider all discipline within the five year period preceding the date of the filing of the grievance complaint that gave rise to the finding of misconduct even if they predate the effective date of these rules.

(2) If the respondent has appealed the issuance of a finding of misconduct made by the statewide grievance committee or the reviewing committee, the court shall first adjudicate and decide that appeal in accordance with the procedures set forth in subsections (d) through (f) of Section 2-38. In the event the court denies the respondent's appeal of the finding of misconduct, the court shall then adjudicate the presentment brought under this section. In no event shall the court review the merits of the matters for which the prior reprimands were issued against the respondent.

(e) No entry fee shall be required for the filing of any complaint pursuant to this section.

COMMENTARY: The above change makes it clear that the court may dismiss a presentment complaint brought pursuant to subsection (d)(1).

Sec. 2-52. Resignation of Attorney

(a) The superior court may, under the procedure provided herein, permit the resignation of an attorney whose conduct is the subject of investigation by a grievance panel, a reviewing committee or the statewide grievance committee or against whom a presentment for misconduct under Section 2-47 is pending.

(b) Such resignation shall be in writing, signed by the attorney, and filed in sextuplicate **[**quintuplicate**]** with the clerk of the superior court in the judicial district in which the attorney resides, or if the attorney is not a resident of this state, to the superior court in Hartford. The clerk shall forthwith send one copy to the grievance panel, one copy to the statewide bar counsel, one copy to disciplinary counsel, one copy to the state's attorney, and one copy to the standing committee on recommendations for admission to the bar. Such resignation shall not become effective until accepted by the court after hearing following a report by the statewide grievance committee that the investigation has been completed, whether or not the attorney seeking to resign shall, in the resignation, waive the privilege of applying for readmission to the bar at any future time.

COMMENTARY: This change provides for notification to disciplinary counsel whenever an attorney resigns and provides that non-resident attorneys submitting their resignations shall file them with the superior court in Hartford. Currently, there is no specific provision designating the court location in which resignations of non-resident attorneys shall be filed.

Sec. 2-70. —Client Security Fund Fee

(a) The judges of the superior court shall assess an annual fee in an amount adequate for the proper payment of claims and the provision of crisis intervention and referral assistance under these rules and the costs of administering the client security fund. Such fee, which the judges of the superior court have set at $110, shall be paid by each attorney admitted to the practice of law in this state and each judge, judge trial referee, state referee, family support magistrate, family support referee and workers' compensation commissioner in this state. Notwithstanding the above, an attorney who is disbarred, retired, resigned, or serving on active duty with the armed forces of the United States for more than six months in such year shall be exempt from payment of the fee, and an attorney who does not engage in the practice of law as an occupation and receives less than $450 in legal fees or other compensation for services involving the practice of law during the calendar year shall be obligated to pay one-half of such fee. No attorney who is disbarred, retired or resigned shall be reinstated pursuant to Sections 2-53 or 2-55 until such

time as the attorney has paid the fee due for the year in which the attorney retired, resigned or was disbarred.

(b) An attorney or family support referee who fails to pay the client security fund fee in accordance with this section shall be administratively suspended from the practice of law in this state pursuant to Section 2-79 of these rules until such payment has been made. An attorney or family support referee who is under suspension for another reason at the time he or she fails to pay the fee, shall be the subject of an additional suspension which shall continue until the fee is paid.

(c) A judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner who fails to pay the client security fund fee in accordance with this section shall be referred to the judicial review council.

COMMENTARY: The above change makes this section consistent with the revision to Section 2-79.

Sec. 2-79. —Enforcement of Payment of Fee

(a) The client security fund committee **[**statewide grievance committee**]** shall send a notice to each attorney who has not paid the client security fund fee pursuant to Section 2-70 of these rules that the attorney's license to practice law in this state may be administratively suspended **[**a presentment will be filed in the superior court against such attorney**]** unless within sixty days from the date of such notice the client security fund committee **[**statewide grievance committee**]** receives from such attorney proof that he or she has either paid the fee or is exempt from such payment. If the client security fund committee **[**statewide grievance committee**]** does not receive such proof within the time required, it shall cause a second notice to be sent to the attorney advising the attorney that he or she will be referred to the superior court for an administrative suspension of the attorney's license to practice law in this state unless within thirty days from the date of the notice proof of the payment of the fee or exemption is received **[**a presentment to be filed against the attorney in the superior court for the judicial district of Hartford**]**. The client security fund committee shall submit to the clerk of the superior court for the Hartford Judicial District a list of attorneys who did not provide proof of payment or exemption within thirty days after the date of the second notice. Upon order of the court, the attorneys so listed and referred to the clerk shall be deemed administratively suspended from the practice of law in this state until such time as payment of the fee is made, which suspension shall be effective upon publication of the list in the Connecticut Law Journal. An administrative suspension of an attorney for failure to pay the client security fund fee shall not be considered discipline, but an attorney who is placed on administrative suspension for such failure shall be ineligible to practice law as an attorney admitted to practice in this state, and shall not be considered in good standing pursuant to Section 2-65 of these rules until such time as the fee is paid. An attorney aggrieved by an order placing the attorney on administrative suspension for failing to pay the client security fund fee may make an application to the superior court to have the order vacated, by filing the application with the superior court for the Hartford Judicial District within thirty days of the date that the order is published, and mailing a copy of the same by certified mail, return receipt requested, to the office of the client security fund committee. The application shall set forth the reasons why the application should be granted. The court shall schedule a hearing on the application, which shall be limited to whether good cause exists to vacate the suspension order.

[(b) A presentment proceeding against an attorney under this section shall be terminated prior to hearing upon proof of payment of the fee to the department of revenue services being provided to the statewide grievance committee.**]**

(b)**[**(c)**]** If a judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner has not paid the client security fund fee, the office of the chief court administrator shall send a notice to such person that he or she will be referred to the judicial review council unless within sixty days from the date of such notice the office of the chief court administrator receives from such person proof that he or she has either paid the fee or is exempt from such payment. If the office of the chief court administrator does not receive such proof within the time required, it shall refer such person to the judicial review council.

(c)**[**(d)**]** Family support referees shall be subject to the provisions of subsection**[**s**]** (a) **[**and (b)**]** herein until such time as they come within the jurisdiction of the judicial review council, when they will be subject to the provisions of subsection (b)**[**(c)**]**.

(d)**[**(e)**]** The notices required by this section shall be sent by certified mail, return receipt requested or with electronic delivery confirmation to the last address registered by the attorney pursuant to Section 2-26 and Section 2-27 (d), and to the home address of the judge, judge trial referee, state referee, family support magistrate, family support referee or workers' compensation commissioner. **[**Presentments filed under this section may be served by certified mail, return receipt requested, sent to the last address registered by the attorney pursuant to Section 2-27 (d).**]**

COMMENTARY: The revisions to the above rule provide an expedited procedure for enforcement of the payment of the Client Security Fund fee which will result in an administrative suspension from the practice of law in this state until the fee is paid.

AMENDMENTS TO THE CIVIL RULES

Sec. 13-9. Requests for Production, Inspection and Examination; In General

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, any party may serve in accordance with Sections 10-12 through 10-17 upon any other party a request to afford the party submitting the request the opportunity to inspect, copy, photograph or otherwise reproduce designated documents (including, but not limited to, writings, drawings, graphs, charts, photographs and phonograph records) or to inspect and copy, test or sample any tangible things in the possession, custody or control of the party upon whom the request is served or to permit entry upon designated land or other property for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon. Such requests will be governed by the provisions of Sections 13-2 through 13-5. In all personal injury actions alleging liability based on the operation or ownership of a motor vehicle or alleging liability based on the ownership, maintenance or control of real property, the requests for production shall be limited to those set forth in Forms 204, 205 and/or 206 of the rules of practice, unless, upon motion, the judicial authority determines that such requests for production are inappropriate or inadequate in the particular action. These forms are set forth in the Appendix of Forms in this volume.

(b) Requests for production may be served upon any party without leave of court at any time after the return day. In lieu of serving the requests for production set forth in Forms 204, 205 and/or 206 on a party who is represented by counsel, the

moving party may serve on such party a notice of requests for production, which shall not include the actual requests, but shall instead set forth the number of the Practice Book form containing such requests and the name of the party to whom the requests are directed.

(c) The request shall clearly designate the items to be inspected either individually or by category. The request or, if applicable, the notice of requests for production shall specify a reasonable time, place and manner of making the inspection. Unless the judicial authority orders otherwise, the frequency of use of requests for production in all actions except those for which requests for production have been set forth in Forms 204, 205, and/or 206 of the rules of practice is not limited.

(d) If data has been electronically stored, the judicial authority may for good cause shown order disclosure of the data in an alternative format provided the data is otherwise discoverable. When the judicial authority considers a request for a particular format, the judicial authority may consider the cost of preparing the disclosure in the requested format and may enter an order that one or more parties shall pay the cost of preparing the disclosure.

(e) The party serving such request or notice of requests for production shall not file it with the court.

(f) A party seeking the production of a written authorization in compliance with the Health Insurance Portability and Accountability Act to inspect and make copies of protected health information, or a written authorization in compliance with the Public Health Service Act to inspect and make copies of alcohol and drug records that are protected by that act, shall file a motion pursuant to Section 13-11A. A motion need not be filed to obtain such authorization in actions to which Forms 204 and 205 of the rules of practice apply.

COMMENTARY: The above change and new Sec. 13-11A provide a procedure for a party to obtain authorizations under HIPAA and the Public Health Service Act to inspect and copy protected health information in cases to which Practice Book Forms 204 and 205 do not apply.

(NEW) Sec. 13-11A. —Motion for Authorization to Obtain Protected Health Information

The judicial authority may, on motion of a party and for good cause shown, order a party to provide a written authorization sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, as that act may from time to time be amended, to inspect and make copies of protected health information.

The judicial authority may, on application of a party that is in compliance with the provisions of the Public Health Service Act and for good cause shown, order a party to provide a written authorization sufficient to comply with the provisions of said act, as that act may from time to time be amended, to inspect and make copies of alcohol and drug records that are protected by that act.

COMMENTARY: A motion need not be filed to obtain such authorization in personal injury actions alleging liability based on the operation or ownership of a motor vehicle, since Forms 204 and 205 of the rules of practice include requests for such authorizations.

Sec. 14-13. Pretrial Procedure

The chief court administrator or the presiding judge with the consent of the chief court administrator may designate one or more available judges or judge trial referees to hold pretrial sessions. Parties and their attorneys shall attend the pretrial session; provided, that when a party against whom a claim is made is insured, an insurance adjuster for such insurance company shall be available by telephone at the time of such pretrial session unless the judge or judge referee, in his or her discretion, requires the attendance of the adjuster at the pretrial. If any person fails to attend or to be available by telephone pursuant to this rule, the judicial authority may

make such order as the ends of justice require, which may include the entry of a nonsuit or default against the party failing to comply and an award to the complying party of reasonable attorney's fees. Each party claiming damages or seeking relief of any kind, or such party's attorney, shall obtain from the court clerk a pretrial memo form, shall complete the form before the pretrial session and shall, at the commencement of the pretrial session, distribute copies of the completed form to the judge and to each other party. Such pretrial memoranda shall not be placed in the court file unless otherwise ordered by the judicial authority who conducted the pretrial. **[**The following matters shall be considered:**]**

The following matters shall be considered at the pretrial session:

(1) A discussion of the possibility of settlement.

(2) Simplification of the issues.

(3) Amendments to pleadings.

(4) Admissions of fact, including stipulations of the parties concerning any material matter and admissibility of evidence, particularly photographs, maps, drawings and documents, in order to minimize the time required for trial.

(5) The limitation of number of expert witnesses.

(6) Inspection of hospital records and x-ray films.

(7) Exchange of all medical reports, bills and evidences of special damage which have come into possession of the parties or of counsel since compliance with previous motions for disclosure and production for inspection.

(8) Scheduling of a trial management conference and issuance of a trial management order by the judicial authority with reference thereto.

(9) Consideration of alternative dispute resolution options to trial.

(10) Such other procedures as may aid in the disposition of the case, including the exchange of medical reports, and the like, which come into possession of counsel subsequent to the pretrial session.

COMMENTARY: The above change makes clear that pretrial memoranda should generally not be part of the court file.

Sec. 17-21. Defaults under [Soldiers' and Sailors'] Servicemembers Civil Relief Act

(a) An affidavit must be filed in every case in which there is a nonappearing defendant, either (1) stating that such defendant is in **[**the**]** military **[**or naval**]** service, within the meaning of the Servicemembers Civil Relief Act, or that the plaintiff is unable to determine whether or not such defendant is in such service, or (2) setting forth facts showing that such defendant is not in such service.

(b) If it appears that the defendant is in such service the judicial authority shall, and if it is undetermined whether the defendant is in such service or not the judicial authority may, appoint an attorney to represent such defendant before judgment is rendered. No such attorney shall have the power to waive any right of the person for whom he or she is appointed or to bind such person by his or her acts.

(c) Unless it appears that the defendant is not in such service, the judicial authority may require as a condition before judgment is rendered that the plaintiff file a bond approved by the judicial authority conditioned to indemnify the defendant, if in military service, against any loss or damage that such defendant may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part.

(d) If it appears that the defendant is in military service, the judicial authority shall grant a stay of proceedings for a minimum period of 90 days upon application of counsel or on the judicial authority's own motion, if the judicial authority determines that: (1) there may be a defense to the action which cannot be presented without the defendant's presence, or (2) counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) If the defendant is in military service or is within 90 days after termination of or release from such service and has received notice of the proceedings, the following provisions apply. At any stage before final judgment the judicial authority may on its own motion and shall, upon application by the defendant, stay the action for a period of not less than 90 days if the application includes (1) a letter or other communication containing facts stating how current military duty requirements materially affect the defendant's ability to appear and stating a date when the defendant will be able to appear, and (2) a letter or other communication from the defendant's commanding officer stating that current military duty prevents appearance and that military leave is not authorized at the time of the letter.

(f) (1) A defendant who is granted a stay under subsection (e) may apply for an additional stay based on the continuing material affect of military duty on the defendant's ability to appear. The application may be made at the time of the initial application or when it appears that the defendant is unable to appear to defend the action. The application shall include the same information required under sub-paragraphs (1) and (2) of subsection (e).

(2) If the judicial authority denies the application for an additional stay, the judicial authority shall appoint counsel to represent the defendant.

[(d)**]** (g) The findings made under the **[**three**]** six preceding subsections shall be recited in the judgment.

(h) An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense.

COMMENTARY: The amendment to the title of the section and the new subsections are based on the requirements of the Servicemembers Civil Relief Act (SCRA) (Pub. L. No. 108-189), which was signed into law on December 19, 2003. The SCRA is a complete revision of the Soldiers' and Sailors' Civil Relief Act (SSCRA). The new law updates and increases the civil protections that were provided to members of the military service under the SSCRA. The new protections include additional requirements that must be met before a court can enter a default judgment against someone who is serving in the military.

Subsection (a) has been amended to change ''military or naval service'' to ''military service'' because the SCRA definition of ''military service'' includes naval service.

New subsection (d) has been added in accordance with the provisions of section 201 (d) of the SCRA, which concerns when a court should grant a stay when the defendant is in the military and has not received notice of the proceedings. Section 201 (d) requires that the court grant a stay for at least 90 days at the request of court-appointed counsel if there may be a defense that cannot be presented in the defendant's absence, or if the court-appointed counsel has been unable to contact the defendant to determine if there is a defense.

With regard to new subsection (e), a stay for at least 90 days upon the servicemember's request is mandated by section 202 (b) of the SCRA. The request must explain why the defendant's military duty materially affects the defendant's ability to appear and must provide a date when the defendant can appear. The request must also be accompanied by a letter from the defendant's commanding officer stating that the defendant's military duty prevents his appearance and that military leave is not authorized at the time the letter is written.

With regard to new subsection (f), section 202 (d) (1) of the SCRA allows the defendant to request an additional stay and section 202 (d) (2) contains a new provision requiring the court to appoint counsel to represent the defendant if the court does not grant the request.

New subsection (h) is based on section 202 (c) of the SCRA, which was added to the federal law to address the concern that an application for a stay may be treated by the court as an appearance. The section makes clear that the application for a stay does not constitute an appearance for jurisdictional purposes.

Sec. 17-30. Summary Process; Default and Judgment for Failure to Appear or Plead

(a) If the defendant in a summary process action does not appear within two days after the return day and a motion for judgment for failure to appear and the notice to quit signed by the plaintiff or plaintiff's attorney and endorsed, with his or her

doings thereon, by the proper officer or indifferent person who served such notice to quit is filed with the clerk, the judicial authority shall, not later than the first court day after the filing of such motion, enter judgment that the plaintiff recover possession or occupancy of the premises with costs, and execution shall issue subject to the statutory provisions.

(b) If the defendant in a summary process action appears but does not plead within two days after the return day or within three days after the filing of the preceding pleading or motion, the plaintiff may file a motion for judgment for failure to plead, served in accordance with Sections 10-12 through 10-17. If the defendant fails to plead within three days after receipt of such motion by the clerk, the judicial authority shall forthwith enter judgment that the plaintiff recover possession or occupancy with costs.

COMMENTARY: The changes to this section are intended to adopt certain provisions of Section 4 of Public Act 04-127.

Sec. 18-5. Taxation of Costs; Appeal

(a) Except as otherwise provided in this section, **[**C**]**costs may be taxed by the clerk in civil cases fourteen days after the filing of a written bill of costs provided that no objection is filed. If a written objection is filed within the fourteen day period, notice shall be given by the clerk to all appearing parties of record of the date and time of the clerk's taxation. The parties may appear at such taxation and have the right to be heard by the clerk.

(b) Either party may move the judicial authority for a review of the taxation by the clerk by filing a motion for review of taxation of costs within twenty days of the issuance of the notice of taxation by the clerk.

(c) Notwithstanding the provisions of subsection (a), the costs paid as an application fee for any execution on a money judgment shall be taxed by the clerk upon the issuance of the execution.

COMMENTARY: It has for many years been the universal practice of the clerks' offices to award the administrative filing fee when an execution for money damages is issued. The clerk's offices differ, however, when a subsequent execution is applied for. The costs paid for all prior executions are awarded by some clerks' offices whenever the creditor lists them on the form; some clerks' offices require the judgment creditor to tax the earlier execution filing fees as a post-judgment cost.

This amendment will standardize the practice around the state and will allow all execution filing fees to be taxed and awarded without delay or further filings.

AMENDMENT TO THE FAMILY RULES

Sec. 25-26. Modification of Custody, Alimony or Support

(a) Upon an application for a modification of an award of alimony pendente lite, alimony or support of minor children, filed by a person who is then in arrears under the terms of such award, the judicial authority shall, upon hearing, ascertain whether such arrearage has accrued without sufficient excuse so as to constitute a contempt of court, and, in its discretion, may determine whether any modification of current alimony and support shall be ordered prior to the payment, in whole or in part as the judicial authority may order, of any arrearage found to exist.

(b) Either parent or both parents of minor children may be cited or summoned by any party to the action to appear and show cause, if any they have, why orders of custody, visitation, support or alimony should not be entered or modified.

(c) If any applicant is proceeding without the assistance of counsel and citation of any other party is necessary, the applicant shall sign the application and present

the application, proposed order and summons to the clerk; the clerk shall review the proposed order and summons and, unless it is defective as to form, shall sign the proposed order and summons and shall assign a date for a hearing on the application.

(d) Each motion for modification of custody, visitation, alimony or child support shall state clearly in the caption of the motion whether it is a pendente lite or a postjudgment motion.

(e) Each motion for modification shall state the specific factual and legal basis for the claimed modification and shall include the outstanding order and date thereof to which the motion for modification is addressed.

(f) On motions addressed to financial issues the provisions of Section 25-30 shall be followed.

(g) Any motion for modification of a final custody or visitation order or a parental responsibility plan shall be appended to a request for leave to file such motion and shall conform to the requirements of subsection (e) of this section. The specific factual and legal basis for the claimed modification shall be sworn to by the moving party or other person having personal knowledge of the facts recited therein. If no objection to the request has been filed by any party within ten days of the date of service of such request on the other party, the request for leave may be determined by the judicial authority with or without hearing. If an objection is filed, the request shall be placed on the next short calendar, unless the judicial authority otherwise directs. At such hearing the moving party must demonstrate probable cause that grounds exist for the motion to be granted. If the judicial authority grants the request for leave, at any time during the pendency of such a motion to modify the judicial authority may determine whether discovery or a study or evaluation pursuant to Section 25-60 shall be permitted.

COMMENTARY: The above change establishes a procedure whereby a party seeking to modify a final custody or visitation order or a parental responsibility plan must file a request for leave to do so accompanied by an affidavit setting forth the factual and legal basis for the modifications.

AMENDMENTS TO THE CRIMINAL RULES

Sec. 38-4. —Release by Judicial Authority

(a) **[**Except as provided in subsection (b),**]** W**[**w**]**hen any defendant is presented before a judicial authority, such authority shall, in bailable offenses, promptly order the release of such person upon the first of the following conditions of release found sufficient reasonably to assure the person's appearance in court and, when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest that the defendant may pose a risk to the physical safety of any person, that the safety of any person will not be endangered:

(1) The defendant's execution of a written promise to appear without special conditions;

(2) The defendant's execution of a written promise to appear with nonfinancial conditions;

(3) The defendant's execution of a bond without surety in no greater amount than necessary;

(4) The defendant's deposit with the clerk of the court of an amount of cash equal to 10 percent of the amount of the surety bond set, pursuant to Section 38-8;

(5) The defendant's execution of a bond with surety in no greater amount than necessary.

(6) The defendant's execution of a cash bond and his or her deposit with the clerk of the court of cash in the amount of the bond set by the judicial authority in no greater amount than necessary.

(b) The judicial authority may, in determining what conditions of release will reasonably assure the appearance of the defendant in court, consider factors (1) through (7) below, and, when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest that the defendant may pose a risk to the physical safety of any person, the judicial authority may also consider factors (8) through (10) below:

(1) The nature and circumstances of the offense, including the weight of the evidence against the defendant;

(2) The defendant's record of previous convictions;

(3) The defendant's past record of appearance in court after being admitted to bail;

(4) The defendant's family ties;

(5) The defendant's employment record;

(6) The defendant's financial resources, character, and mental condition;

(7) The defendant's community ties;

(8) The defendant's history of violence;

(9) Whether the defendant has previously been convicted of similar offenses while released on bond; and

(10) The likelihood based upon the expressed intention of the defendant that he will commit another crime while released.

[(b)**]**(c) In addition to or in conjunction with any of the conditions enumerated in subdivisions (1) to (6) of subsection (a), the judicial authority may, when it has reason to believe that the defendant is drug-dependent and where necessary, reasonable and appropriate, order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such defendant.

[(c) When any defendant charged with the commission of a Class A felony, a Class B felony, except a violation of General Statutes §§ 53a-86 or 53a-122, a Class C felony, except a violation of General Statutes §§ 53a-87, 53a-123, 53a-152 or 53a-153, or a Class D felony under General Statutes §§ 53a-60 to 53a-60c, inclusive, General Statutes §§ 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216, is presented before a judicial authority, such authority shall, in bailable offenses, promptly order the release of such person upon the first of the following conditions of release found sufficient reasonably to assure his or her appearance in court and that the safety of any other person will not be endangered:

(1) The defendant's execution of a written promise to appear without special conditions;

(2) The defendant's execution of a written promise to appear with nonfinancial conditions;

(3) The defendant's execution of a bond without surety in no greater amount than necessary;

(4) The defendant's execution of a bond with surety in no greater amount than necessary.

(d) In addition to or in conjunction with any of the conditions enumerated in subdivisions (1) to (4) of subsection (c), the judicial authority may, when it has reason to believe that the defendant is drug-dependent and where necessary, reasonable and appropriate, order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such defendant.**]**

[(e)**]**(d) If the judicial authority determines that a nonfinancial condition of release should be imposed pursuant to subsection**[**s**]** (a)(2) **[**or (c)(2)**]** of this section, the judicial authority shall order the pretrial release of the defendant subject to the least restrictive condition or combination of conditions that the judicial authority determines will reasonably assure the appearance of the defendant in court and**[**, with respect to the release of the defendant pursuant to subsection (c) of this section**]**, when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest that the defendant may pose a risk to the physical safety of any person, that the safety of any **[**other**]** person will not be endangered, which conditions may include an order that he or she do one or more of the following:

(1) Remain under the supervision of a designated person or organization;

(2) Comply with specified restrictions on his or her travel, association or place of abode;

(3) Not engage in specified activities, including the use or possession of a dangerous weapon, an intoxicant or a controlled substance;

(4) Participate in the zero-tolerance drug supervision program established under General Statutes § 53a-39d;

[(4)**]**(5) Provide sureties of the peace pursuant to General Statutes § 54-56f under supervision of a designated bail commissioner;

[(5)**]**(6) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

[(6)**]**(7) Maintain employment or, if unemployed, actively seek employment;

[(7)**]**(8) Maintain or commence an educational program;

(9) Be subject to electronic monitoring; or

[(8)**]**(10) Satisfy any other condition that is reasonably necessary to assure the appearance of the defendant in court and that the safety of any other person will not be endangered.

[(f)**]**(e) The judicial authority shall state on the record its reasons for imposing any such nonfinancial condition.

(f) The judicial authority may require that the defendant subject to electronic monitoring pursuant to subsection (d) of this section pay directly to the electronic monitoring service provider a fee for the cost of such electronic monitoring services. If the judicial authority finds that the defendant subject to electronic monitoring is indigent and unable to pay the costs of electronic monitoring services, it shall waive such costs.

COMMENTARY: The primary purpose of the revisions to the above section and the repeal of Sec. 38-10 is to clarify the provisions and make them easier to use.

In addition, rather than attempting to enumerate the specific general statutes that deal with the safety of other persons as is done in current subsection (c), which enumeration is not sufficiently comprehensive in that it omits certain crimes that put the safety of others at risk, current subsection (c) has been repealed and the matter is dealt with generically in subsection (a). The treatment of such crimes has been moved to subsection (a) because the conditions of release available to the judicial authority with regard to the crimes listed in current (c) should be the same as those available under (a).

Many of the provisions of Sec. 38-10 have been integrated into new subsection (b) above for the purposes of clarity and ease of use.

New subsections (d)(4), (d)(9) and (f) are intended to adopt certain provisions of C.G.S. § 54-64a.

[Sec. 38-10. Factors to Be Considered by the Judicial Authority in Release Decision

(a) Except as provided in subsection (b), the judicial authority may, in determining what conditions of release will reasonably assure the appearance of the defendant in court, consider the following factors:

(1) The nature and circumstances of the offense;

(2) The defendant's record of previous convictions;

(3) The defendant's past record of appearance in court after being admitted to bail;
(4) The defendant's family ties;
(5) The defendant's employment record;
(6) The defendant's financial resources, character, and mental condition; and
(7) The defendant's community ties.

(b) When any defendant is charged with the commission of an offense enumerated in Section 38-4 (c), the judicial authority may, in determining what conditions of release will reasonably assure the appearance of the defendant in court and that the safety of any other person will not be endangered, consider the following factors:
(1) The nature and circumstances of the offense;
(2) The defendant's record of previous convictions;
(3) The defendant's past record of appearance in court after being admitted to bail;
(4) The defendant's family ties;
(5) The defendant's employment record;
(6) The defendant's financial resources, character and mental condition;
(7) The defendant's community ties;
(8) The number and seriousness of charges pending against the defendant;
(9) The weight of the evidence against the defendant;
(10) The defendant's history of violence;
(11) Whether the defendant has previously been convicted of similar offenses while released on bond; and
(12) The likelihood based upon the expressed intention of the defendant that he will commit another crime while released.**]**

COMMENTARY: See commentary to Sec. 38-4.

Sec. 44-19. Reference to Judge Trial Referee

The judicial authority may, with the **[**written**]** consent of the parties or their attorneys, refer any criminal case to a judge trial referee who shall have and exercise the powers of the superior court in respect to trial, judgment, sentencing and appeal in the case, except that the judicial authority may, without the consent of the parties or their attorneys, (A) refer any criminal case, other than a criminal jury trial, to a judge trial referee assigned to a geographical area criminal court session, and (B) refer any criminal case, other than a class A or B felony or capital felony, to a judge trial referee to preside over the jury selection process and any voir dire examination conducted in such case, unless good cause is shown not to refer. Any case referred to a trial referee shall be deemed to have been referred for all further proceedings, judgment and sentencing, including matters pertaining to any appeal therefrom unless otherwise ordered before or after the reference.

AMENDMENTS TO THE PRACTICE BOOK FORMS

Form 203

Plaintiff's Interrogatories Premises Liability Cases

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The undersigned, on behalf of the Plaintiff, hereby propounds the following interrogatories to be answered by the Defendant, _____, under oath, within thirty (30) days of the filing hereof insofar as the disclosure sought will be of assistance in the prosecution of this action and can be provided by the Defendant with substantially greater facility than could otherwise be obtained.

1. Identify the person(s) who, at the time of the plaintiff's alleged injury, owned the premises where the plaintiff claims to have been injured.

(a) If the owner is a natural person, please state:

(i) Your name and any other name by which you have been known:

(ii) Your date of birth:

(iii) Your home address:

(iv) Your business address:

(b) If the owner is not a natural person, please state:

(i) Your name and any other name by which you have been known:

(ii) Your business address:

(iii) The nature of your business entity (corporation, partnership, etc.):

(iv) Whether you are registered to do business in Connecticut:

(v) The name of the manager of the property, if applicable:

2. Identify the person(s) who, at the time of the plaintiff's alleged injury, had a possessory interest (e.g., tenants) in the premises where the plaintiff claims to have been injured.

3. Identify the person(s) responsible for the maintenance and inspection of the premises at the time and place where the plaintiff claims to have been injured.

4. State whether you had in effect at the time of the plaintiff's injuries any written policies or procedures that relate to the kind of conduct or condition the plaintiff alleges caused the injury.

5. State whether it is your business practice to prepare, or obtain from your employees, a written report of the circumstances surrounding injuries sustained by persons on the subject premises.

6. State whether any written report of the incident described in the complaint was prepared by you or your employees in the regular course of business.

7. State whether any warnings or caution signs or barriers were erected at or near the scene of the incident at the time the plaintiff claims to have been injured.

8. If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name, address and employer of the person who erected the warning or caution signs or barriers:

(b) the name, address and employer who instructed the person to erect the warning or caution signs or barriers:

(c) the time and date a sign or barrier was erected:

(d) the size of the sign or barrier and wording that appeared thereon:

9. State whether you received, at any time six months before the incident described by the plaintiff, complaints from anyone about the defect or condition that the plaintiff claims caused the plaintiff's injury.

10. If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name and address of the person who made the complaint:

(b) the name, address and person to whom said complaint was made:

(c) whether the complaint was in writing:

(d) the nature of the complaint:

11-**[**21**]**22. (Interrogatories 1 (a)-(e), 2 through 9**,** **[**and**]** 12, 13 **[**through 14**]** and 16 of Form 201 may be used to complete this standard set of interrogatories.)

PLAINTIFF,

BY _____

COMMENTARY: The revisions to this form are intended to comport with the revisions to Form 201 that became effective January 1, 2005.

Form 204

Plaintiff's Requests for Production

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The Plaintiff(s) hereby request(s) that the Defendant provide counsel for the Plaintiff(s) with copies of the documents described in the following requests for production, or afford counsel for said Plaintiff(s) the opportunity or, if necessary, written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorization shall take place at the offices of _____ on (day), (date) at (time).

Definition: ''You'' shall mean the defendant to whom these interrogatories are directed except that if that defendant has been sued as the representative of the estate of a decedent, ward, or incapable person, ''you'' shall also refer to the defendant's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

(1) A copy of the appraisal or bill for repairs as identified in response to Interrogatory #11.

(2) A copy of declaration page(s) of each insurance policy identified in response to Interrogatory #7 and/or #8.

(3) If the answer to Interrogatory #9 is in the affirmative, a copy of the complete policy contents of each insurance policy identified in response to Interrogatory #7 and/or #8.

(4) A copy of any photographs identified in response to Interrogatory #6.

(5) A copy of any non-privileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(6) A copy of all lease agreements pertaining to any motor vehicle involved in the incident which is the subject of this action, which was owned or operated by you or your employee, and all documents referenced or incorporated therein.

(7) A copy of all records of blood alcohol testing or drug screens referred to in answer to Interrogatory # [17]16, or a [sufficient] signed authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act or those of the Public Health Service Act, whichever is applicable**,** to obtain the same for each hospital, person or entity that performed such test or screen. Information obtained pursuant to the provisions of HIPAA or the Public Health Service Act shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

PLAINTIFF,

BY _____

This is to certify that a copy of the foregoing has been mailed, this _____ day of _____, ____ to (opposing counsel).

_____
(Attorney Signature)

COMMENTARY: The above changes have been made in light of the Health Insurance Portability and Accountability Act and the Public Health Service Act.

Form 205

Defendant's Requests for Production

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The Defendant(s) hereby request(s) that the Plaintiff provide counsel for the Defendant(s) with copies of the documents described in the following requests for production, or afford counsel for said Defendant(s) the opportunity or, where requested, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies and written authorizations shall take place at the offices of _____ not later than thirty (30) days after the service of the Requests for Production.

(1) All hospital records relating to treatment received as a result of the alleged incident, and to injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22, or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said hospital records. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(2) All reports and records of all doctors and all other care providers relating to treatment allegedly received by the Plaintiff(s) as a result of the alleged incident, and to the injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22 (exclusive of any records prepared or maintained by a licensed psychiatrist or psychologist) or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said reports. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(3) Copies of, or sufficient written authorization to inspect and make copies of, the wage and employment records of all employers of the Plaintiff(s) for three (3) years prior to the date of the incident and for all years subsequent to the date of the incident to and including the date hereof.

(4) If a claim of impaired earning capacity or lost wages is being alleged, provide copies of, or sufficient written authorization to obtain copies of, that part of all income tax returns relating to lost income filed by the Plaintiff(s) for a period of three (3) years prior to the date of the incident and for all years subsequent to the date of the incident through the time of trial.

(5) All property damage bills that are claimed to have been incurred as a result of this incident.

(6) All medical bills that are claimed to have been incurred as a result of this incident or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said medical bills. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(7) All bills for each item of expense that is claimed to have been incurred in the answer to Interrogatory #18, and not already provided in response to ¶5 and ¶6 above.

(8) Copies of all documentation of claims of right to reimbursement provided to the plaintiff by third party payors, and copies of, or [sufficient] written authorization**,** sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to obtain any and all documentation of payments made by a third party for medical services received or premiums paid to obtain such payment. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(9) All documents identified or referred to in the answers to Interrogatory #26.

(10) A copy of any non-privileged statements, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(11) Any and all photographs identified in response to Interrogatory #32.

(12) A copy of all records of blood alcohol testing or drug screens referred to in answer to Interrogatory #35, or a [sufficient] signed authorization**,** sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act or those of the Public Health Service Act, whichever is applicable, to obtain the same. Information obtained pursuant to the provisions of HIPAA or the Public Health Service Act shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

DEFENDANT,

BY _____

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this _____ day of _____, ____ to:

_____

(Attorney Signature)

COMMENTARY: The above changes have been made in light of the Health Insurance Portability and Accountability Act and the Public Health Service Act.